NOTIFICATION. 357

Order No. Rl. 101—*Regis.* 7-42-1, *dated Bangalore the* 22*nd July* 1942.

Ordered that the accompanying Maintenance Orders (Enforcement) Act, 1942, which received the assent of His Highness the Maharaja, on the 7th day of July 1942, be published as Act No. XXVIII of 1942, in the *Mysore Gazette*, for general information.

C. NARAYANASWAMY NAIDU,
Secretary to Government,
Law Department.

ACT No. XXVIII OF 1942.

THE MAINTENANCE ORDERS (ENFORCEMENT) ACT, 1942.

(*Received the assent of His Highness the Maharaja on the seventh day of July* 1942.)

An Act to facilitate the enforcement in Mysore of maintenance orders made in His Majesty the King-Emperor's Dominions, Protectorates *and Indian States* **and** *vice versa.*

Whereas it is expedient to facilitate the enforcement in Mysore of maintenance orders made in His Majesty the King-Emperor's Dominions and Protectorates and *vice versa*; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Maintenance Orders (Enforcement) Act, 1942.

(2) It extends to the whole of Mysore.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

"court of summary jurisdiction" means the Court of a District Magistrate;

"dependants" means such persons as a person against whom a maintenance order is made is liable to maintain according to the law in force in the place in which the maintenance order is made;

"maintenance order" means a decree or order other than an order of affiliation, made by a

Court in the exercise of civil or criminal jurisdiction for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made;

"prescribed" means prescribed by rules made under this Act;

"proper authority" means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which this Act applies; and

"reciprocating territory" means any part of His Majesty the King-Emperor's Dominions, Protectorates and Indian States in respect of which this Act for the time being applies.

Reciprocal arrangements.

3. (1) If the Government are satisfied that provisions have been made by the Legislature of any part of His Majesty the King-Emperor's dominions for the enforcement within that part of maintenance orders made by Courts in Mysore, the Government may by notification in the official Gazette declare that this Act applies in respect of that part of His Majesty the King-Emperor's dominions and thereupon it shall apply accordingly.

(2) The Government may, by like notification, declare that this Act applies in respect of any British Protectorate, or in respect of any State in India, and where such a declaration has been made, this Act shall apply as if such Protectorate or State were a reciprocating territory.

Registration in Mysore of maintenance orders in other parts of His Majesty the King-Emperor's Dominions.

4. Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in any reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the Government, the Government shall send a copy of the order to the prescribed officer of a Court in Mysore for registration, and on receipt thereof, the order shall be registered in the prescribed manner.

Transmission of maintenance orders made in Mysore.

5. Where a court in Mysore has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the Court shall send to the Government for transmission to the proper authority of that territory, a certified copy of the order.

359

6. (1) Where application is made to a Court of summary jurisdiction in Mysore for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, the Court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if that person had wilfully neglected to attend the Court; but in such caser the order shall be provisional only and shall have no effect unless and until confirmed by a competent Court in such territory.

Powers of summary Courts to tak provisional maintenance orders against persons resident in His Majesty the King-Emperor's Dominions.

(2) The evidence of every witness who is examined on any such application shall be reduced to writing, and such deposition shall be read over to, and signed by him.

(3) Where such an order is made, the Court shall send to the Government for transmission to the proper authority of the reciprocating territory in which the person against whom the order is made is alleged to reside, the depositions so taken and a certified copy of the order together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing and such information as the Court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in a reciprocating territory for confirmation, and the order has by that Court been remitted to the Court of summary jurisdiction which made the order for the purpose of taking further evidence, that Court shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5) If it appears to the Court hearing such evidence that the order ought not to have been made, the Court may rescind the order, but in any other case, the depositions shall be sent to the Government and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a Court of summary jurisdiction to vary or rescind that order:

Provided that, on the making of a varying or rescinding order, the Court shall send a certified copy thereof to the Government for transmission to the proper

360

authority of the reciprocating territory in which the original order was confirmed, or to which it was sent for confirmation and that, in the case of an order varying the original order, the order shall not have any effect unless and until confirmed in like manner as the original order.

Power of Court of summary jurisdiction to confirm maintenance order made out of Mysore

7. (1) Where a maintenance order has been made by a Court in a reciprocating territory and the order is provisional only, and has no effect unless and until confirmed by a Court of summary jurisdiction in Mysore and a certified copy of the order, together with the depositions of the witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted to the Government and it appears to the Government that the person against whom the order has been made is resident in Mysore, the Government may send the said documents to the prescribed officer of a Court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and, upon receipt of such documents and requisition, the Court shall issue such a summons and cause it to be served upon such person.

(2) A summons issued under sub-section (1) shall, for all purposes, be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with summons does not appear or, on appearing, fails to satisfy the Court that the order ought not to be confirmed, the Court may, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in Mysore, confirm the order either without modification or with such modifications as to the Court, after hearing the evidence, may seem just:

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to whom the summons was issued appears at the hearing and satisfies the Court that for the purpose of any defence it is necessary to remit the case to the Court which made the provisional order for the taking of any further evidence, the Court may for that purpose send a certified copy of the record to the Government for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming Court, and where on an application for rescission or variation the Court is satisfied that it is necessary to remit the case to the Court which made the provisional order for the purpose of taking any further evidence, the Court may for the purpose send a certified copy of the record to the Government for transmission to that Court through the proper authority for the reciprocating territory and may adjourn the proceedings.

Enforcement of maintenance orders.

8. A court of summary jurisdiction in which an order has been registered under this Act or by which an order has been confirmed under this Act and the officers of such Court shall have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

Payment of charges for transmission of sums awarded as maintenance and other costs and charges.

9. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act, shall direct that the charges for the transmission to the Court from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to, and in the same manner as, such other costs and charges as may be awarded or levied by the Court.

Proof of documents signed by officers of Court.

10. For the purposes of this Act any document purporting to be signed by a judge or officer of a Court outside Mysore shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person

362

appearing to have signed it, and the officer of a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the Court to sign the document.

Depositions to be evidence.

11. Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

Rule-making power.

12. The Government may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.

N. MADHAVA RAU,
Dewan.

Price Re. 0-0-6.

Printed by the Superintendent at the Government Press, Bangalore.